

1           **SECTION 26.** 766.62 (5) (intro.) of the statutes is amended to read:

2           766.62 (5) (intro.) If Except as provided in s. 854.14 (3m) (c), if the nonemployee  
3 spouse predeceases the employee spouse, the marital property interest of the  
4 nonemployee spouse in all of the following terminates at the death of the  
5 nonemployee spouse:

6           **SECTION 27.** 767.266 (1) (b) of the statutes is amended to read:

7           767.266 (1) (b) That one or both spouses will make a particular disposition in  
8 a will or other governing instrument, as defined in s. 854.01 (2).

9           **SECTION 28.** 851.055 (1m) of the statutes is created to read:

10          851.055 (1m) Is not classified as individual property or marital property under  
11 a valid marital property agreement, unless the marital property agreement provides  
12 otherwise.

\*\*\*\*NOTE: The property becomes deferred marital property unless the agreement  
classifies the property as individual or marital, unless the agreement provides otherwise.  
But if the agreement provided otherwise, wouldn't the agreement classify the property?  
And how else could the agreement classify the property -- an agreement would not  
classify property as deferred marital property. I do not understand what "unless the  
marital property agreement provides otherwise" adds.

\*\*\*\*NOTE: This section does not appear in an initial applicability provision.

13          **SECTION 29.** 851.21 (1) (b) of the statutes is amended to read:

14          851.21 (1) (b) ~~A~~ Except as provided in s. 853.32 (2) (e), a beneficiary named in  
15 any document offered for probate as the will of the decedent and includes a person  
16 named or acting as a trustee of any trust, inter vivos or testamentary, named as a  
17 beneficiary.

18          **SECTION 30.** 851.31 of the statutes is amended to read:

19          **851.31 Will.** ~~"Will"~~ Unless the context or subject matter indicates otherwise,  
20 "will" includes a codicil and any document incorporated by reference in a  
21 testamentary document under s. 853.32 (1) or (2). "Will" does not include a copy,

1 unless the copy has been proven as a will under s. 856.17, but “will” does include a  
2 properly executed duplicate original.

3 **SECTION 31.** 851.50 of the statutes is amended to read:

4 **851.50 Status of adopted persons.** The status of adopted persons for  
5 purposes of inheritance and transfers under wills or other governing instruments,  
6 as defined in s. 854.01 (2), is governed by ss. 854.20 and 854.21.

7 **SECTION 32.** 852.01 (1) (a) 2. of the statutes is renumbered 852.01 (1) (a) 2.  
8 (intro.) and amended to read:

9 852.01 (1) (a) 2. (intro.) If there are surviving issue one or more of whom are  
10 not issue of the surviving spouse, one-half of decedent’s property other than the  
11 following property:

12 a. The decedent’s interest in marital property.

13 **SECTION 33.** 852.01 (1) (a) 2. b. of the statutes is created to read:

14 852.01 (1) (a) 2. b. The decedent’s interest in property held equally and  
15 exclusively with the surviving spouse as tenants in common.

16 **SECTION 34.** 852.01 (1) (b) of the statutes is amended to read:

17 852.01 (1) (b) To the issue, per stirpes, the share of the estate not passing to the  
18 spouse under par. (a), or the entire estate if there is no surviving spouse. If there are  
19 ~~issue other than children, those of more remote degrees take per stirpes.~~

20 **SECTION 35.** 852.12 of the statutes is amended to read:

21 **852.12 Debts to decedent.** If an heir owes a debt to the decedent, s. 854.12  
22 governs the treatment of that debt shall be charged against the intestate share of the  
23 debtor, regardless of whether the debt has been discharged in bankruptcy. If the  
24 debtor fails to survive the decedent, the debt shall not be taken into account in  
25 computing the intestate shares of the debtor’s issue.

1 *Fix component* SECTION 36. 853.03 (2) <sup>am</sup> ~~(intro.)~~ of the statutes is amended to read:  
2 853.03 (2) <sup>am</sup> ~~(intro.)~~ It must be signed by 2 or more witnesses, ~~each of whom~~  
3 signed within a reasonable time after witnessing any of the following:

4 SECTION 37. 853.03 (2) (a) of the statutes is amended to read:  
5 ~~853.03 (2) (a)~~ The signing of the will as provided under sub. (1), in the conscious  
6 presence of the witness.

7 SECTION 38. 853.03 (2) (b) of the statutes is amended to read:  
8 ~~853.03 (2) (b)~~ The testator's implicit or explicit acknowledgement of the  
9 testator's signature on the will, within in the conscious presence of each of the  
10 witnesses witness.

11 SECTION 39. 853.03 (2) (c) of the statutes is amended to read:  
12 ~~853.03 (2) (c)~~ The testator's implicit or explicit acknowledgement of the will,  
13 within in the conscious presence of each of the witnesses witness.

14 SECTION 40. 853.04 (3) of the statutes is repealed and recreated to read:  
15 853.04 (3) EFFECT OF AFFIDAVIT. The effect of an affidavit in substantially the  
16 form under sub. (1) or (2) is as provided in s. 856.16.

17 SECTION 41. 853.11 (2) of the statutes is renumbered 853.12, and 853.12 (1), (2)  
18 (intro.), (b) and (c), (3) (intro.) and (4) (intro.) and (b), as renumbered, are amended  
19 to read:

20 853.12 (1) ENTITLEMENT OF SURVIVING SPOUSE ~~UNDER A PREMARITAL WILL.~~ Subject  
21 to par. (e) sub. (3), if the testator married the surviving spouse after the testator  
22 executed his or her will, the surviving spouse is entitled to a share of the probate  
23 estate.

24 (2) VALUE OF SHARE. (intro.) The value of the share under par. (a) sub. (1) is the  
25 value of the share that the surviving spouse would have received had the testator

*renumbered  
853.03 (2) (am) and*

*and at least 2 witnesses must have*

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1 died with an intestate estate equal to the value of the net estate of the decedent  
2 testator less the value of all of the following:

3 (b) All devises to or for the benefit of the issue of a child described in ~~subd. 1.~~  
4 par. (a).

5 (c) All devises that pass under s. 854.06, 854.07, 854.21, or 854.22 to or for the  
6 benefit of children described in ~~subd. 1.~~ par. (a) or issue of those children.

7 (3) EXCEPTIONS. (intro.) ~~Paragraph (a)~~ Subsection (1) does not apply if any of  
8 the following applies:

9 (4) PRIORITY AND ABATEMENT. (intro.) In satisfying the share provided by this  
10 ~~subsection~~ section:

11 (b) Devises other than those described in ~~par. (b) 1. to 3.~~ sub. (2) (a) to (c) abate  
12 as provided under s. 854.18.

13 **SECTION 42.** 853.11 (2m) of the statutes is created to read:

14 853.11 (2m) PREMARITAL WILL. Entitlements of a surviving spouse under a  
15 decedent's will that was executed before marriage to the surviving spouse are  
16 governed by s. 853.12.

17 **SECTION 43.** 853.11 (3) of the statutes is amended to read:

18 853.11 (3) ~~FORMER SPOUSE~~ REVOCATION BY DIVORCE. ~~The effect of a~~ A transfer  
19 under a will to a former spouse is governed by s. 854.15.

20 **SECTION 44.** 853.11 (6) (c) of the statutes is amended to read:

21 853.11 (6) (c) If a subsequent will that wholly or partly revoked a previous will  
22 is itself revoked by another, later will, the previous will or its revoked part remains  
23 revoked, unless it or its revoked part is revived. The previous will or its revoked part  
24 is revived to the extent that it appears from the terms of the later will, or from the

1 testator's contemporary or subsequent declarations, that the testator intended the  
2 previous will or its revoked part to take effect.

3 **SECTION 45.** 853.11 (6) (d) of the statutes is amended to read:

4 853.11 (6) (d) In the absence of an original valid will, establishment of the  
5 execution and validity of the revived will or part ~~is governed by~~ may be established  
6 as provided in s. 856.17.

7 **SECTION 46.** 853.32 (1) of the statutes is renumbered 853.32 (1) (am).

8 **SECTION 47.** 853.32 (1) (bm) of the statutes is created to read:

9 853.32 (1) (bm) A writing or document is incorporated into a will under par.  
10 (am) even if the writing or document is not executed in compliance with s. 853.03 or  
11 853.05.

12 **SECTION 48.** 853.32 (2) (a) of the statutes is amended to read:

13 853.32 (2) (a) A reference in a will ~~executed on or after May 3, 1996,~~ to another  
14 document that lists tangible personal property not otherwise specifically disposed of  
15 in the will disposes of that property if the other document describes the property and  
16 the distributees with reasonable certainty and is signed and dated by the decedent.

17 The court may enforce a document that is not dated but that fulfills all of the other  
18 requirements under this paragraph.

19 **SECTION 49.** 853.32 (2) (b) of the statutes is renumbered 853.32 (2) (b) (intro.)

20 and amended to read:

21 853.32 (2) (b) (intro.) Another document under par. (a) is valid even if it any of  
22 the following applies:

23 1. The document does not exist when the will is executed, ~~even if it.~~

24 2. The document is changed after the will is executed ~~and even if it.~~

1           3. The document has no significance except for its effect on the disposition of  
2 property by the will.

3           **SECTION 50.** 853.32 (2) (b) <sup>(am)</sup> 4 of the statutes is created to read:

4           853.32 (2) (b) <sup>am</sup> 4 The document was signed in compliance with s. 853.03 (1) or  
5 with the law of the place where the document was signed, or where the testator  
6 resided, was domiciled, or was a national at the time the document was signed or at  
7 the time of death, but was not otherwise executed in compliance with s. 853.03 (2)  
8 or 853.05.

9           **SECTION 51.** 854.01 of the statutes is renumbered 854.01 (intro.) and amended  
10 to read:

11           **854.01 Definition Definitions.** (intro.) In this chapter, "governing:

12           (2) "Governing instrument" means a will; a deed; a trust instrument; an  
13 insurance or annuity policy; a contract; a pension, profit-sharing, retirement, or  
14 similar benefit plan; a marital property agreement under s. 766.58 (3) (f); a  
15 beneficiary designation under s. 40.02 (8) (a); an instrument under ch. 705; an  
16 instrument that creates or exercises a power of appointment; or any other  
17 dispositive, appointive, or nominative instrument that transfers property at death.

18           **SECTION 52.** 854.01 (1) of the statutes is created to read:

19           854.01 (1) "Extrinsic evidence" means evidence that would be inadmissible  
20 under the common law parol evidence rule or a similar doctrine because the evidence  
21 is not contained in the governing instrument to which it relates.

22           **SECTION 53.** 854.03 (2) (b) of the statutes is amended to read:

23           854.03 (2) (b) Except as provided in sub. (5), if property is transferred under  
24 a governing instrument that establishes 2 or more co-owners with right of  
25 survivorship, and if it is not established that at least one of the co-owners survived

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1 did not survive the others by at least 120 hours, the property is transferred to the  
2 co-owners in proportion to their ownership interests.

3 **SECTION 54.** 854.03 (3) of the statutes is repealed.

4 **SECTION 55.** 854.03 (4) of the statutes is repealed.

5 **SECTION 56.** 854.03 (5) (d) of the statutes is amended to read:

6 854.03 (5) (d) The imposition of a 120-hour survival requirement would cause  
7 a nonvested property interest or a power of appointment to fail to be valid, or to be  
8 invalidated, under s. 700.16 or under the rule against perpetuities of the applicable  
9 jurisdiction.

\*\*\*NOTE: This section does not appear in an initial applicability provision.

10 **SECTION 57.** 854.03 (5) (g) of the statutes is created to read:

11 854.03 (5) (g) The statute or governing instrument specifies that this statute,  
12 or one similar to it, does not apply.

13 **SECTION 58.** 854.03 (5) (h) of the statutes is created to read:

14 854.03 (5) (h) The transfer is under a governing instrument and the transfer  
15 is controlled by a provision regarding survivorship that is included in a will, trust,  
16 or marital property agreement executed by the transferor and that is intended to  
17 apply to transfers under other governing instruments.

18 **SECTION 59.** 854.03 (5) (i) of the statutes is created to read:

19 854.03 (5) (i) The transfer is under a governing instrument and the court finds  
20 ~~a contrary intent on the part of the person who executed the governing instrument.~~  
21 ~~The court may use extrinsic evidence to construe that intent.~~

22 **SECTION 60.** 854.03 (5) (j) of the statutes is created to read:

23 854.03 (5) (j) The imposition of a 120-hour survival requirement would be  
24 administratively cumbersome and would not change the identity of the beneficiaries

had a contrary intent

may be used ✓

1 ~~(of the property)~~ the ultimate beneficiaries of the property, or the property that each  
2 beneficiary would receive.

\*\*\*NOTE: This section does not appear in an initial applicability provision.

3 **SECTION 61.** 854.03 (6) of the statutes is amended to read:

4 854.03 (6) EVIDENTIARY STANDARD. Unless the statute or governing instrument  
5 provides otherwise, proof that an individual survived the period required under  
6 subs. (1) to (4) this section must be by clear and convincing evidence.

7 **SECTION 62.** 854.03 (7) of the statutes is repealed.

8 **SECTION 63.** 854.04 (1) (a) of the statutes is amended to read:

9 854.04 (1) (a) Except as provided in subs. (5) and (6), if a statute or a governing  
10 instrument calls for property to be distributed to the issue or descendants of a  
11 designated person "by representation" <sup>2</sup> "by right of representation," or "per  
12 stirpes" <sup>2</sup> the property is divided into equal shares for the designated person's  
13 surviving children of the designated person and for the designated person's deceased  
14 children who left surviving issue. Each surviving child and each deceased child who  
15 left surviving issue are allocated one share.

16 **SECTION 64.** 854.04 (5) (intro.) of the statutes is amended to read:

17 854.04 (5) CERTAIN INDIVIDUALS DISREGARDED. (intro.) For the purposes of this  
18 section subs. (1) to (3), all of the following apply:

19 <sup>Fix component</sup> **SECTION 65.** 854.05 (5) of the statutes is amended to read:

20 854.05 (5) ~~CONTRARY INTENT~~ <sup>(a)</sup> This section does not apply to the extent that a  
21 governing instrument, either expressly or as construed from extrinsic evidence,  
22 provides otherwise if the court finds a contrary intent of the person who executed the  
23 governing instrument. The court may use extrinsic evidence to construe that intent.  
<sup>had a contrary intent</sup> <sup>may be used</sup>

24 <sup>(91)(b)</sup> A general directive to pay debts does not give rise to a presumption of exoneration.  
<sup>score</sup>



1           **SECTION 66.** 854.06 (1) (b) of the statutes is repealed.

2           **SECTION 67.** 854.06 (4) (a) of the statutes is renumbered 854.06 (4) (intro.) and  
3 amended to read:

4           854.06 (4) CONTRARY INTENT. (intro.) ~~This section~~ Subsection (3) does not apply  
5 if there is a finding of any of the following applies:

6           (c) ~~The court finds a contrary intent of the decedent.~~ ~~Extrinsic~~ The court may  
7 use extrinsic evidence may be used to construe that intent. *strike* *plain*

8           **SECTION 68.** 854.06 (4) (am) of the statutes is created to read:

9           854.06 (4) (am) The governing instrument provides that a transfer to a  
10 predeceased beneficiary lapses.

11           **SECTION 69.** 854.06 (4) (b) of the statutes is amended to read:

12           854.06 (4) (b) ~~If the~~ The governing instrument designates one or more persons,  
13 classes, or groups of people as contingent transferees, in which case those transferees  
14 take in preference to those under sub. (3). ~~But~~ Unless par. (c) applies, if none of the  
15 contingent transferees survives, sub. (3) applies to the first group in the sequence of  
16 contingent transferees that has one or more transferees specified in sub. (2) who left  
17 surviving issue.

18           **SECTION 70.** 854.07 (3) of the statutes is amended to read:

19           854.07 (3) If a governing instrument other than a will does not effectively  
20 dispose of an asset that is governed by the instrument, that asset shall be paid or  
21 distributed to the decedent's transferor's probate estate.

22           **SECTION 71.** 854.08 (5) of the statutes is renumbered 854.08 (5) (b) and  
23 amended to read:

24           854.08 (5) (b) Subject to pars. (c) and (d) and sub. (6), if property that is the  
25 subject of a specific gift is sold by a guardian ~~or~~, conservator, ~~or~~ agent of the person ✓

*or*  
*mortgaged*

*or trustee*

*Person*  
*who executed*  
*the*  
*governing*  
*instrument*  
*had*

1 who executed the governing instrument, or if a condemnation award or insurance  
2 proceeds are paid to a guardian ~~or~~ conservator, <sup>or trustee</sup> ~~or agent~~, the specific beneficiary has <sup>mortgage</sup>  
3 the right to a general pecuniary transfer equivalent to the proceeds of the sale ~~or the~~  
4 condemnation award, or <sup>↓ ↓</sup> ~~the~~ insurance proceeds, reduced by any amount expended  
5 or incurred to restore or repair the property if the funds are available under the  
6 governing instrument. This provision

7 (c) Paragraph (b) does not apply with respect to a guardian or conservator if the  
8 person who executed the governing instrument, subsequent to the sale <sup>↓ mortgage</sup> ~~or award~~ or  
9 receipt of insurance proceeds, is adjudicated competent and survives such  
10 adjudication for a period of one year; but in such event ~~a sale by a guardian or~~  
11 ~~conservator within 2 years of that person's death is a sale by that person for purposes~~  
12 ~~of sub. (2).~~ <sup>Strike</sup> INS 20-12 ✓

13 SECTION 72. 854.08 (5) (a) of the statutes is created to read:

14 854.08 (5) (a) In this subsection, "agent" means an agent under a durable power  
15 of attorney, as defined in s. 243.07 (1) (a).

16 SECTION 73. 854.08 (5) (d) of the statutes is created to read:

17 854.08 (5) (d) Paragraph (b) does not apply with respect to an agent <sup>or trustee</sup> ~~if any of~~  
18 the following applies:

19 1. The person who executed the governing instrument is competent at the time  
20 of the sale <sup>mortgage</sup> ~~or award~~, or receipt of insurance proceeds. INS 20-20 ✓

21 2. After the sale or award or receipt of insurance proceeds, the person who  
22 executed the governing instrument executes a written document stating that the  
23 specific beneficiary does not have a right to a general pecuniary transfer equivalent  
24 to the proceeds of the sale or condemnation award or the insurance proceeds and the  
25 person is competent when he or she executes the written document.

1           **SECTION 74.** 854.08 (6) (a) 1. of the statutes is amended to read:

2           854.08 (6) (a) 1. The ~~court finds a contrary intent of the person who executed~~  
3           ~~the governing instrument, either expressly or as construed from~~ ~~The court may use~~  
4           ~~extrinsic~~ evidence, shows the intent that a transfer fail under the particular  
5           circumstances <sup>may be used</sup> to construe that intent.

6           **SECTION 75.** 854.08 (6) (a) 2. of the statutes is amended to read:

7           854.08 (6) (a) 2. The person who executed the governing instrument gives  
8           property during the person's lifetime to the specific beneficiary with the intent of  
9           satisfying the specific gift. ~~Extrinsic evidence may be used to construe that intent,~~  
10          and the requirement under s. 854.09 (1) is satisfied.

11          **SECTION 76.** 854.115 of the statutes is created to read:

12          **854.115 Valuation of distributed assets.** (1) VALUATION OF IN-KIND  
13          DISTRIBUTIONS AS OF DATE OF DISTRIBUTION. A distribution of property in kind to a  
14          distributee who receives a pecuniary transfer, a ~~fixed~~ dollar amount, or a fractional  
15          share in a group of assets shall be made on the basis of the fair market value of the  
16          property on the date of distribution. This subsection applies to distributions under  
17          a governing instrument or under a statute, except that distributions under a  
18          governing instrument are subject to subs. (2) and (3).

19          (2) EXCEPTION IF GOVERNING INSTRUMENT PROVIDES OTHERWISE. Subject to sub.  
20          (3), if the distribution is made under a governing instrument, and the instrument  
21          requires or permits a different value to be used, all assets available for distribution,  
22          including cash, shall be distributed so that the assets distributed to satisfy the  
23          transfer fairly represent the net appreciation or depreciation in the value of the  
24          available property on the date of the distribution.

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1 (3) CONTRARY INTENT. (a) This section does not apply if the distribution is made  
2 under a governing instrument and the court finds that the person who executed the  
3 governing instrument had a contrary intent. The court may use extrinsic evidence  
4 to construe the contrary intent. *may be used*

5 (b) A provision in a governing instrument that the personal representative or  
6 other fiduciary may fix values for the purpose of distribution does not of itself fix a  
7 value other than fair market value on the date of distribution.

\*\*\*NOTE: This section does not appear in an initial applicability provision.

8 **SECTION 77.** 854.12 of the statutes is created to read:

9 **854.12 Debt to transferor.** (1) HEIR UNDER INTESTACY. (a) If an heir owes a  
10 debt to the decedent, the amount of the indebtedness shall be offset against the  
11 intestate share of the debtor heir. The property not distributed to the debtor heir  
12 becomes part of the decedent's probate estate. If multiple revocable governing  
13 instruments transfer property to the debtor heir, the court shall determine how to  
14 allocate the debt to the various instruments. *constitute authorization to*

15 (b) In contesting an offset under par. (a), the debtor heir shall have the benefit  
16 of any defense that would be available to the debtor heir in a direct proceeding by the  
17 personal representative for the recovery of the debt, except that the debtor heir may  
18 not defend on the basis that the debt was discharged in bankruptcy or on the basis  
19 that the relevant statute of limitations has expired. If the debtor fails to survive the  
20 decedent, the court may not include the debt in computing the intestate shares of the  
21 debtor's issue. *any*

22 (2) RECIPIENT UNDER REVOCABLE GOVERNING INSTRUMENT. (a) Subject to par. (c),  
23 if a transferee under a revocable governing instrument survives the transferor and

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1 is indebted to the transferor, the court shall treat the amount of the indebtedness as  
2 an offset against property to which the debtor transferee is entitled.

3 (b) Subject to par. (c), in contesting an offset under par. (a), the transferee shall  
4 have the benefit of any defense that would be available to the transferee in a direct  
5 proceeding for the recovery of the debt, except that the transferee may not defend on  
6 the basis that the debt was discharged in bankruptcy, unless that discharge occurred  
7 before the execution of the governing instrument, or on the basis that the relevant  
8 statute of limitations has expired. If the transferee fails to survive the decedent, the  
9 court may not include the debt in computing the entitlement of alternate  
10 beneficiaries.

11 (c) Paragraph (a) or (b) does not apply if the court finds contrary intent of the  
12 person who executed the governing instrument. The court may use extrinsic  
13 evidence to construe that intent.

14 **SECTION 78.** 854.13 (2) (gm) of the statutes is created to read:

15 854.13 (2) (gm) *Disclaimer by trustee.* The trustee of a trust named as a  
16 recipient of property under a governing instrument may disclaim that property on  
17 behalf of the trust if the governing instrument authorizes disclaimer by the trustee.  
18 If the governing instrument does not authorize disclaimer by the trustee, the  
19 trustee's power to disclaim is subject to the approval of the court.

20 **SECTION 79.** 854.13 (7) (a) of the statutes is amended to read:

21 854.13 (7) (a) Unless the transferor of the property or donee of the power has  
22 otherwise provided otherwise in a governing instrument, either expressly or as  
23 construed from extrinsic evidence, the disclaimed property devolves as if the  
24 disclaimant had died before the decedent or before the effective date of the transfer  
25 under the governing instrument. If the disclaimant is an appointee under a power

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1 exercised by a governing instrument, the disclaimed property devolves as if the  
2 disclaimant had died before the effective date of the exercise of the power. If the  
3 disclaimant is a taker in default under a power created by a governing instrument,  
4 the disclaimed property devolves as if the disclaimant had predeceased the donee of  
5 the power. This paragraph is subject to subs. (8), (9) and (10). *plain*

6 **SECTION 80.** 854.13 (8) of the statutes is amended to read:

7 854.13 (8) DEVOLUTION OF DISCLAIMED INTEREST IN JOINT TENANCY. ~~A~~ Unless the  
8 decedent provided otherwise in a governing instrument, either expressly or as  
9 construed from extrinsic evidence, a disclaimed interest in a joint tenancy passes to  
10 the decedent's probate estate.

11 **SECTION 81.** 854.13 (9) of the statutes is amended to read:

12 854.13 (9) DEVOLUTION OF DISCLAIMED INTEREST IN SURVIVORSHIP MARITAL  
13 PROPERTY. ~~A~~ Unless the decedent provided otherwise in a governing instrument,  
14 either expressly or as construed from extrinsic evidence, a disclaimed interest in  
15 survivorship marital property passes to the decedent's probate estate.

16 **SECTION 82.** 854.13 (10) of the statutes is amended to read:

17 854.13 (10) DEVOLUTION OF DISCLAIMED FUTURE INTEREST. ~~Unless the instrument~~  
18 ~~creating the future interest manifests a contrary intent~~ transferor of the future  
19 interest or donee of the power under which the future interest was created provided  
20 otherwise in a governing instrument, either expressly or as construed from extrinsic  
21 evidence, a future interest limited to take effect in possession or enjoyment after the  
22 termination of the interest which ~~that~~ is disclaimed takes effect as if the disclaimant  
23 had died before the effective date of the governing instrument or, if the disclaimant  
24 is an appointee under a power exercised by a governing instrument, as if the  
25 disclaimant had died before the effective date of the exercise of the power.

1           **SECTION 83.** 854.14 (1) of the statutes is repealed.

2           **SECTION 84.** 854.14 (3m) of the statutes is created to read:

3           **854.14 (3m) EFFECT IF DEATH CAUSED BY SPOUSE.** (a) *Definitions.* In this  
4 subsection:

5           1. “Owner” means a person appearing on the records of the policy issuer as the  
6 person having the ownership interest, or means the insured if no person other than  
7 the insured appears on those records as a person having that interest. In the case  
8 of group insurance, the “owner” means the holder of each individual certificate of  
9 coverage under the group plan and does not include the person who contracted with  
10 the policy issuer on behalf of the group, regardless of whether that person is listed  
11 as the owner on the contract.

12           2. “Ownership interest” means the rights of an owner under a policy.

13           3. “Policy” means an insurance policy insuring the life of a spouse and providing  
14 for payment of death benefits at the spouse’s death.

15           4. “Proceeds” means the death benefit from a policy and all other economic  
16 benefits from it, whether they accrue or become payable as a result of the death of  
17 an insured person or upon the occurrence or nonoccurrence of another event.

18           (b) *Life insurance.* 1. Except as provided in sub. (6), if a noninsured spouse  
19 unlawfully and intentionally kills an insured spouse, the surviving spouse’s  
20 ownership interest in a policy that designates the decedent spouse as the owner and  
21 insured, or in the proceeds of such a policy, is limited to a dollar amount equal to  
22 one-half of the marital property interest in the interpolated terminal reserve and in  
23 the unused portion of the term premium of the policy on the date of death of the  
24 decedent spouse. All other rights of the surviving spouse in the ownership interest

1 or proceeds of the policy, other than the marital property interest described in this  
2 subsection, terminate at the decedent spouse's death.

3 2. Notwithstanding s. 766.61 (7) and except as provided in sub. (6), if an insured  
4 spouse unlawfully and intentionally kills a noninsured spouse, the ownership  
5 interest at death of the decedent spouse in any policy with a marital property  
6 component that designates the surviving spouse as the owner and insured is a  
7 fractional interest equal to one-half of the portion of the policy that was marital  
8 property immediately before the death of the decedent spouse.

9 (c) *Deferred employment benefits.* Notwithstanding s. 766.62 (5) and except as  
10 provided in sub. (6), if the employee spouse unlawfully and intentionally kills the  
11 nonemployee spouse, the ownership interest at death of the decedent spouse in any  
12 deferred employment benefit, or in assets in an individual retirement account that  
13 are traceable to the rollover of a deferred employment benefit plan, that has a marital  
14 property component and that is attributable to the employment of the surviving  
15 spouse is equal to one-half of the portion of the benefit or assets that was marital  
16 property immediately before the death of the decedent spouse.

17 (d) *Deferred marital property.* Except as provided in sub. (6), if the surviving  
18 spouse unlawfully and intentionally kills the decedent spouse, the estate of the  
19 decedent shall have the right to elect no more than 50% of the augmented deferred  
20 marital property estate, as determined under s. 861.02 (2), as though the decedent  
21 spouse were the survivor and the surviving spouse were the decedent. The court  
22 shall construe the provisions of ss. 861.03 to 861.11 as necessary to achieve the intent  
23 of this paragraph.

24 **SECTION 85.** 854.14 (5) (a) of the statutes is amended to read:



1           854.14 (5) (a) A final judgment establishing criminal accountability for the  
2 unlawful and intentional killing of the decedent conclusively establishes the  
3 convicted individual as the decedent's killer for purposes of this section and s. 861.02  
4 (8).

5           **SECTION 86.** 854.14 (5) (b) of the statutes is amended to read:

6           854.14 (5) (b) A final adjudication of delinquency on the basis of an unlawful  
7 and intentional killing of the decedent conclusively establishes the adjudicated  
8 individual as the decedent's killer for purposes of this section and s. 861.02 (8).

9           **SECTION 87.** 854.14 (5) (c) of the statutes is amended to read:

10          854.14 (5) (c) In the absence of a judgment establishing criminal accountability  
11 under par. (a) or an adjudication of delinquency under par. (b), the court, upon the  
12 petition of an interested person, shall determine whether, ~~under~~ based on the  
13 preponderance of the evidence standard, the killing of the decedent was unlawful  
14 and intentional for purposes of this section and s. 861.02 (8).

15          **SECTION 88.** 854.15 (1) (e) of the statutes is renumbered 854.01 (3) and  
16 amended to read:

17          854.01 (3) "Revocable" <sup>2</sup> with respect to a disposition, provision, or nomination,  
18 means one under which the decedent, at the time <sup>plain</sup> of the divorce, annulment or similar  
19 event <sup>score</sup> referred to, was alone empowered, by law or under the governing instrument,  
20 to change, revoke, or <sup>or</sup> cancel the designation in favor of the former spouse or former  
21 spouse's relative, regardless of whether or not the decedent was then empowered to  
22 designate himself or herself in place of <sup>a</sup> the former spouse or the former spouse's  
23 relative designee, and regardless of whether or not the decedent then had the  
24 capacity to exercise the power.

25          **SECTION 89.** 854.17 (title) of the statutes is repealed and recreated to read:

1 ~~854.17 (title) Marital property classification and division.~~

2 SECTION 90. 854.17 of the statutes is renumbered 854.17 (1).

3 SECTION 91. 854.17 (2) of the statutes is created to read:

4 854.17 (2) Under s. 766.31 (3) (b), at the death of the spouse, marital property  
5 may be divided based on aggregate value rather than divided item by item.

\*\*\*\*NOTE: I am not sure why s. 854.17 is renumbered and s. 854.17 (2) is created.  
Doesn't s. 854.17 already cover what s. 854.17 (2) now states? It states that ch. 766 covers  
property classification in chs. 851 to 882. As an aside, shouldn't this provision be  
renumbered to appear at the beginning of ch. 851 — doesn't it seem out of place?

6 SECTION 92. 854.18 (1) (a) (intro.) of the statutes is amended to read:

7 INS 28-7  
8 854.18 (1) (a) (intro.) Except as provided in sub. (3) or in connection with the  
9 share of the surviving spouse who elects to take an elective share in deferred marital  
10 property deferred marital property elective share amount of a surviving spouse who  
11 elects under s. 861.02, ~~a~~ the share of a surviving spouse who takes under s. 853.11  
12 (2) 853.12, or a the share of a surviving child who takes under s. 853.25, shares of  
13 distributees abate, without any preference or priority as between real and personal  
14 property, in the following order:

15 SECTION 93. 854.18 (3) of the statutes is amended to read:

16 854.18 (3) If the governing instrument expresses an order of abatement, or if  
17 the decedent's transferor's estate plan or the ~~express or implied~~ purpose of the  
18 transfer, as expressed, implied, or determined through extrinsic evidence, would be  
19 defeated by the order of abatement under sub. (1), the shares of the distributees  
20 abate as necessary to give effect to the intention of the transferor.

21 SECTION 94. 854.20 (1) of the statutes is renumbered 854.20 (1) (a) and  
22 amended to read:

23 854.20 (1) (a) Subject to par. (b) and sub. (4) (5), a legally adopted person is  
treated as a birth child of the person's adoptive parents for purposes of intestate

and the adoptive parents are treated  
as the birth parents of the adoptive child

1 ~~succession~~ <sup>transfers at death</sup> by, through, and from the adopted person and for purposes of any statute  
 2 conferring rights upon children, issue, or relatives in connection with the law of  
 3 intestate succession or governing instruments.

4 **SECTION 95.** 854.20 (2) <sup>(intro.)</sup> of the statutes is renumbered 854.20 (2) (am) <sup>(intro.)</sup> and  
 5 854.20 (2) (am) <sup>(intro.)</sup> and 2. ~~as renumbered~~ are amended to read:

6 854.20 (2) (am) (intro.) Subject to sub. (4) (5), a legally adopted person ceases  
 7 to be treated as a child of the person's birth parents for the same purposes as under  
 8 specified in sub. (1) (a), except: <sup>if</sup> and the birth parents cease to be  
 9 <sup>subject to subd. 2. b. and c.</sup> treated as the parents of the child

10 <sup>INS 29-9</sup> 2. <sup>a.</sup> ~~if~~ a birth parent of a marital child dies and the other birth parent  
 11 <sup>854.20 (2) (am)</sup> subsequently remarries and the child is adopted by the stepparent, the child is  
 12 <sup>SECTION # RA 854.20 (2) (b)</sup> treated as the child of the deceased birth parent for purposes of inheritance <sup>or other rule</sup> through  
 13 that parent and for purposes of any statute conferring rights upon children, issue,  
 14 or relatives of that parent under the law of intestate succession or governing  
 15 instruments. <sup>transfers at death</sup>

16 **SECTION 96.** 854.20 (3) <sup>c</sup> of the statutes is renumbered 854.20 (2) (bm) and  
 17 amended to read:

18 854.20 (2) (bm) <sup>c</sup> ~~Sequential adoption.~~ Subject to sub. (4) (5), if an adoptive  
 19 parent dies or his or her parental rights are terminated in a legal proceeding and the  
 20 adopted child is subsequently adopted by another person, the former adoptive parent  
 21 is considered to be a birth parent for purposes of this <sup>subsection</sup> section.

22 **SECTION 97.** 854.20 (4) of the statutes is renumbered 854.20 (1) (b), and 854.20  
 23 (1) (b) <sup>and 3.</sup> (intro.) <sup>are</sup> as renumbered, ~~is~~ amended to read:

24 854.20 (1) (b) ~~Applicability.~~ (intro.) Subsections (1), (2) and (3) apply  
 25 Paragraph (a) applies only if at least one of the following applies:

**SECTION 98.** 854.20 (5) of the statutes is amended to read:

Subject to sub. (5)

INS 29-24

1 854.20 (5) CONTRARY INTENT. This section does not apply if the to a transfer is  
2 made under a governing instrument and there is a finding of ~~if the court finds a~~  
3 ~~contrary intent~~ of the person who executed the instrument. ~~Extrinsic~~ ~~The court may~~  
4 ~~use extrinsic~~ evidence ~~may be used~~ to construe that intent. ~~plain~~

5 SECTION 99. 854.21 (1) (a) (intro.) of the statutes is renumbered 854.21 (1) (a)  
6 and amended to read:

7 854.21 (1) (a) Except as provided in ~~par. (b) or~~ sub. (7), a gift of property by a  
8 governing instrument to a class of persons described as "issue," "lawful issue,"  
9 "children," "grandchildren," "descendants," "heirs," "heirs of the body," "next of kin,"  
10 "distributees," or the like includes a person adopted by a person whose birth child  
11 would be a member of the class, and issue of the adopted person, if the conditions for  
12 membership in the class are otherwise satisfied and ~~any of the following applies:~~ at  
13 least one of the criteria under s. 854.20 (1) (b) 1., 2., and 3. is satisfied.

14 SECTION 100. 854.21 (1) (a) 1., 2. and 3. of the statutes are repealed.

15 SECTION 101. 854.21 (1) (b) of the statutes is amended to read:

16 854.21 (1) (b) Except as provided in sub. (7), a gift ~~under par. (a) of property by~~  
17 a governing instrument to a class of persons described as "issue," "lawful issue,"  
18 "children," "grandchildren," "descendants," "heirs," "heirs of the body," "next of kin,"  
19 "distributees," or the like excludes a birth child and his or her issue otherwise within  
20 the class if the birth child has been adopted and would cease to be treated as a child  
21 of the birth parent under s. 854.20 (2).

22 SECTION 102. 856.05 (5) of the statutes is amended to read:

23 856.05 (5) APPLICABILITY OF SECTION. This section applies to wills, ~~codicils,~~  
24 ~~documents incorporated by reference under s. 853.32 (1) or (2) and information~~  
25 needed for proof of a ~~lost or otherwise missing~~ will under s. 856.17.

1           **SECTION 103.** 856.15 (1) of the statutes is amended to read:

2           856.15 (1) **GENERALLY.** The court may grant probate of an uncontested will on  
3 the execution in open court by one of the subscribing witnesses of a sworn statement  
4 that the will was executed as required by the statutes and that the testator was of  
5 sound mind, of full age, and not acting under any restraint at the time of the  
6 execution thereof. If an uncontested will contains an attestation clause showing  
7 compliance with the requirements for execution under s. 853.03 or 853.05 or includes  
8 an affidavit in substantially the form under s. 853.04 (1) or (2), the court may grant  
9 probate without any testimony or other evidence.

10           **SECTION 104.** 856.16 of the statutes is repealed and recreated to read:

11           **856.16 Self-proved will.** (1) Unless there is proof of fraud or forgery in  
12 connection with the affidavit, if a will includes an affidavit in substantially the form  
13 under s. 853.04 (1) or (2), all of the following apply:

14           (a) The will is conclusively presumed to have been executed in compliance with  
15 s. 853.03.

16           (b) Other requirements related to the valid execution of the will are rebuttably  
17 presumed. (cc) ← plain

18           (2) A signature affixed to a self-proving affidavit under s. 853.04 that is  
19 attached to a will is considered a signature affixed to the will, if necessary to prove  
20 the due execution of the will.

21           (3) Admission of a will under s. 856.13 or 856.15 is not dependent on the  
22 existence of a valid affidavit under s. 853.04.

23           **SECTION 105.** 856.17 of the statutes is amended to read:

24           **856.17 Lost Missing will, how proved.** If any will is lost, destroyed by  
25 accident or, destroyed without the testator's consent, or otherwise missing, the court

unavailable but revived under  
s. 853.11 (6), ✓

1 has power to take proof of the execution and validity of the will and to establish the  
2 same. The petition for the probate of the will shall set forth the provisions thereof  
3 of the will.

4 **SECTION 106.** 857.03 (2) (intro.) of the statutes is amended to read:

5 857.03 (2) (intro.) The Under s. 766.31 (3), the surviving spouse and a  
6 distributee who is a successor in interest to all or part of the decedent's one-half  
7 interest in marital property may petition the court to approve an exchange of  
8 interests in the marital property. If the court approves the exchange, the personal  
9 representative shall exchange their respective interests in 2 or more items of marital  
10 property and distribute the items in a manner to conform with the exchange. The  
11 exchange shall:

\*\*\*\*NOTE: See the note under s. 766.31 (3). I don't understand why this  
cross-reference is being added.

\*\*\*\*NOTE: This section does not appear in an initial applicability provision.

12 **SECTION 107.** 861.01 (3) of the statutes is renumbered ✓ 766.31 (7m) and  
13 amended to read:

14 766.31 (7m) PERSONAL INJURY DAMAGES; LOST EARNINGS. <sup>- plain</sup> To the extent that  
15 marital property includes damages for loss of future income arising from a personal  
16 injury claim of the a surviving spouse, the surviving spouse is entitled to receive as  
17 individual property that portion of the award that represents an income substitute  
18 after the death of the other spouse.

19 **SECTION 108.** 861.01 (4) of the statutes is created to read:

20 861.01 (4) ENFORCEMENT OF SURVIVING SPOUSE'S MARITAL PROPERTY RIGHTS IN  
21 NONPROBATE ASSETS. Section 766.70 applies to enforcement of a surviving spouse's  
22 marital property rights in nonprobate assets.

23 **SECTION 109.** 861.01 (5) of the statutes is created to read:

861.01 (5) DIVISION OF MARITAL PROPERTY ON AGGREGATE BASIS. Section 766.31 (3) (b) determines how marital property may be divided upon the death of a spouse.

\*\*\*\*NOTE: This section does not appear in an initial applicability provision.

**SECTION 110.** Subchapter II (title) of chapter 861 [precedes 861.018] of the statutes is amended to read:

## CHAPTER 861

## SUBCHAPTER II

~~ELECTIVE SHARE IN~~

## DEFERRED MARITAL PROPERTY

## ELECTIVE SHARE AMOUNT

**SECTION 111.** 861.02 (title) of the statutes is amended to read:

**861.02 (title) Deferred marital property elective share amount.**

**SECTION 112.** 861.02 (4) of the statutes is amended to read:

861.02 (4) SATISFACTION. Satisfaction of the augmented deferred marital property elective share amount is governed by ss. 861.06, 861.07, and 861.11.

**SECTION 113.** 861.02 (6) of the statutes is amended to read:

861.02 (6) WAIVER. Waiver of the deferred marital property elective share amount is governed by s. 861.10.

**SECTION 114.** 861.02 (7) (b) of the statutes is amended to read:

861.02 (7) (b) If a decedent who is not domiciled in this state owns real property in this state, the ~~right~~ rights of the surviving spouse ~~to take an elective share in that~~ property ~~is~~ are governed by s. 861.20.

**SECTION 115.** 861.02 (8) of the statutes is repealed and recreated to read:

✓  
(2)(c) and

1 861.02 (8) EFFECT IF DEATH CAUSED BY SPOUSE. Section 854.14 (3m) (d) applies  
2 to election of deferred marital property if the decedent's surviving spouse unlawfully  
3 and intentionally killed the decedent.

4 ~~SECTION 116. 861.04 (1) of the statutes is renumbered 861.04.~~

5 SECTION 117. 861.04 (2) of the statutes is repealed.

6 SECTION 118. 861.05 (1) (c) of the statutes is amended to read:

7 861.05 (1) (c) Transfers of deferred marital property to persons other than the  
8 surviving spouse who did not make the transfer, with the written joinder or written  
9 consent of ~~the surviving~~ that spouse.

\*\*\*NOTE: This section does not appear in an initial applicability provision.

10 SECTION 119. 861.05 (1) (e) of the statutes is created to read:

11 861.05 (1) (e) The deferred marital property component of any deferred  
12 employment benefit plan held by the surviving spouse that would have terminated  
13 under s. 766.62 (5) had it been marital property and had the surviving spouse been  
14 the decedent.

15 SECTION 120. 861.05 (2) (title) of the statutes is amended to read:

16 861.05 (2) (title) VALUATION OF DECEDENT'S PROPERTY AND TRANSFERS.

17 SECTION 121. 861.05 (2m) of the statutes is created to read:

18 861.05 (2m) VALUATION OF SURVIVING SPOUSE'S PROPERTY AND TRANSFERS. The  
19 surviving spouse's property included in the augmented deferred marital property  
20 estate under s. 861.04 <sup>(1)</sup> is valued in the same manner as the decedent spouse's  
21 property included in the augmented deferred marital property estate is valued under  
22 sub. (2), subject to the following:

✓  
or of assets in an individual retirement account  
that are traceable to the rollover of a defined  
employment benefit plan,



(a) The surviving spouse shall be treated as having died after the decedent on the date of the decedent's death notwithstanding the 120-hour survival requirement under s. 854.03 (1).

(b) Life insurance on the surviving spouse's life shall have the value of the deferred marital property component of the interpolated terminal reserve and the unused portion of the term premium of the policy as of the date of the decedent's death.

**SECTION 122.** 861.06 (title) of the statutes is amended to read:

**861.06 (title) Satisfaction of deferred marital property elective share amount.**

**SECTION 123.** 861.06 (2) (title) of the statutes is amended to read:

**861.06 (2) (title) INITIAL SATISFACTION OF DEFERRED MARITAL PROPERTY ELECTIVE SHARE AMOUNT.**

**SECTION 124.** 861.06 (2) (b) (intro.) of the statutes is amended to read:

**861.06 (2) (b) (intro.)** All marital, individual, deferred marital, or deferred individual property, transferred to the surviving spouse, including any beneficial interest in property transferred in trust:

**SECTION 125.** 861.06 (2) (b) 4. a. of the statutes is amended to read:

**861.06 (2) (b) 4. a.** The first \$5,000 of the value of the gifts from the decedent to the surviving spouse each year. Each gift shall be valued as of the date of the gift.

→ **INSERT 35-21**  
**SECTION 126.** 861.07 (2) (intro.) of the statutes is amended to read:

**861.07 (2) PERSONS LIABLE.** (intro.) The following persons are liable to make a prorated contribution toward satisfaction of the surviving spouse's deferred marital property elective share amount:

**SECTION 127.** 861.10 (1) of the statutes is amended to read:

1           861.10 (1) RIGHT TO ELECT MAY BE WAIVED. The right to elect a deferred marital  
2           property elective share amount may be waived by the surviving spouse in whole or  
3           in part. The waiver may take place before or after marriage. The waiver ~~shall~~ must  
4           be contained in a marital property agreement that is enforceable under s. 766.58 or  
5           in a signed document filed with a court described in s. 861.08 (1) (a) after the  
6           decedent's death.

7           **SECTION 128.** 861.10 (2) of the statutes is amended to read:

8           861.10 (2) WAIVER OF "ALL RIGHTS" Unless the waiver provides otherwise, a  
9           waiver of "all rights" or equivalent language, in the property or estate of a present  
10          or prospective spouse, or in a complete property settlement entered into because of  
11          separation or divorce, is a waiver of all rights in the deferred marital property  
12          elective share amount.

13          **SECTION 129.** 861.11 (2) (a) (intro.) of the statutes is amended to read:

14          861.11 (2) (a) (intro.) Upon a beneficiary's request for payment, a payer or other  
15          3rd party who has received satisfactory proof of the decedent's death and who has not  
16          received written notice that the surviving spouse or his or her representative intends  
17          to file a petition for the deferred marital property elective share amount or that a  
18          petition for the election has been filed is not liable for any of the following:

19          **SECTION 130.** 861.11 (2) (b) of the statutes is amended to read:

20          861.11 (2) (b) A payer or other 3rd party is liable for payments made or other  
21          actions taken after receipt of written notice of the intent to file a petition for the  
22          elective share amount or written notice that a petition for the elective share amount  
23          has been filed.

24          **SECTION 131.** 861.11 (5) (b) of the statutes is amended to read:

1           861.11 (5) (b) Notwithstanding sub. (2), in addition to the protections afforded  
2   a financial institution under ss. 701.19 (11) and 710.05 and chs. 112 and 705 a  
3   financial institution is not liable for having transferred an account included in the  
4   augmented deferred marital property estate under s. 861.03 to a beneficiary  
5   designated in a governing instrument, or for having taken any other action in  
6   reliance on the beneficiary's apparent entitlement under the terms of a governing  
7   instrument, regardless of whether the financial institution received written notice  
8   of an intent to file, or the filing of, a petition for the deferred marital property elective  
9   share amount.

10           **SECTION 132.** 861.17 (3) of the statutes is amended to read:

11           861.17 (3) If the spouse is successful in an action to reach fraudulent property  
12   arrangements, recovery is limited to the share amount the spouse would receive  
13   under ch. 852 and this chapter. Other rules of this chapter apply so far as possible.  
14   Recovery A spouse who recovers under this subsection forfeits any power of  
15   appointment ~~which~~ that the surviving spouse possesses over the remaining portion  
16   of the fraudulently arranged property, except a special power.

17           **SECTION 133.** 861.21 (1) (a) of the statutes is amended to read:

18           861.21 (1) (a) "Governing instrument" has the meaning given in s. 854.01 (2).

19           **SECTION 134.** 861.21 (4) of the statutes is amended to read:

20           861.21 (4) PAYMENT BY SURVIVING SPOUSE. The court shall assign the interest in  
21   the home under sub. (2) or (3) to the surviving spouse upon payment of the value of  
22   the interest that does not pass to the surviving spouse under intestacy or under the  
23   governing instrument. Payment shall be made to the fiduciary holding title to the  
24   interest. The surviving spouse may use assets due him or her from the fiduciary to  
25   satisfy all or part of the payment in kind. Unless the court extends the time, the

1 ~~surviving spouse shall have one year from the decedent's death to pay the value of~~  
2 ~~the assigned interest.~~

3 **SECTION 135.** 861.31 (1c) of the statutes is repealed.

4 **SECTION 136.** 861.31 (1m) of the statutes is amended to read:

5 861.31 (1m) The court may, without notice or on such notice as the court  
6 directs, order payment by the personal representative or special administrator of an  
7 allowance as ~~it~~ the court determines necessary or appropriate for the support of the  
8 surviving spouse and any dependent minor children of the decedent during the  
9 administration of the estate. ~~In making or denying the order~~ To make the decision,  
10 the court shall consider the size of the probate estate, other resources available for  
11 support, the existing standard of living, and any other factors it considers relevant.

12 **SECTION 137.** 861.31 (2) of the statutes is amended to read:

13 861.31 (2) The court may order that an allowance may be made to the spouse  
14 for support of the spouse and any dependent minor children of the decedent, or that  
15 separate allowances may be made to the spouse and to the dependent minor children  
16 of the decedent or their guardian, if any, if the court finds separate allowances  
17 advisable. If there is no surviving spouse, the court may order that an allowance may  
18 be made to the dependent minor children of the decedent or to their guardian, if any.

19 **SECTION 138.** 861.31 (4) (intro.) of the statutes is amended to read:

20 861.31 (4) (intro.) The court may direct order that the allowance be charged  
21 against income or principal, either as an advance or otherwise, but ~~in no event may~~  
22 the court may not order that an allowance for support of dependent minor children  
23 of the decedent be charged against the income or principal interest of the surviving  
24 spouse. The court may direct order that the allowance for support of the surviving

1 spouse, not including any allowance for support of dependent minor children of the  
2 decedent, be applied in satisfaction of any of the following:

3 **SECTION 139.** 861.31 (4) (a) of the statutes is amended to read:

4 861.31 (4) (a) Any entitlement of the surviving spouse under s. 853.11 (2)  
5 853.12.

6 **SECTION 140.** 861.33 (title) of the statutes is amended to read:

7 **861.33 (title) Selection of personalty by surviving spouse or children.**

\*\*\*\*NOTE: I did not put any treatment of s. 861.33 in an initial applicability  
provision.

8 **SECTION 141.** 861.33 (1) (a) (intro.) of the statutes is amended to read:

9 861.33 (1) (a) (intro.) Subject to this section, in addition to all allowances and  
10 distributions, the surviving spouse, ~~or if there is no surviving spouse the decedent's~~  
11 ~~children,~~ may file with the court a written selection of the following personal  
12 property, which shall thereupon then be transferred to the spouse ~~or children~~ by the  
13 personal representative:

14 **SECTION 142.** 861.33 (1) (b) of the statutes is amended to read:

15 861.33 (1) (b) The selection in par. (a) may not include items specifically  
16 bequeathed except that the surviving spouse ~~or children~~ may in every case select the  
17 normal household furniture, furnishings, and appliances necessary to maintain the  
18 home. For this purpose antiques, family heirlooms, and collections ~~which~~ that are  
19 specifically bequeathed are not classifiable as normal household furniture or  
20 furnishings.

21 **SECTION 143.** 861.33 (1) (c) of the statutes is repealed.

22 **SECTION 144.** 861.33 (2) of the statutes is amended to read:

1           861.33 (2) If it appears that claims may not be paid in full, the court may, upon  
2 petition of any creditor, limit the transfer of personalty to the spouse ~~or children~~  
3 under this section to items not exceeding \$5,000 in aggregate inventory value until  
4 ~~such time as~~ the claims are paid in full or the court otherwise orders; ~~or the court~~  
5 may require the spouse ~~or children~~ to retransfer property in excess of \$5,000 or, at  
6 the option of the spouse ~~or children~~, pay the excess in value over this amount.

7           **SECTION 145.** 861.33 (3) of the statutes is amended to read:

8           861.33 (3) The surviving spouse ~~or children~~ may select items not specifically  
9 bequeathed of the type specified under sub. (1) (a) 4. exceeding in value the \$3,000  
10 limit or obtain the transfer of items exceeding the limit set by the court under sub.  
11 (2), by paying to the personal representative the excess of inventory value over the  
12 respective limit.

13           **SECTION 146.** 861.33 (4) of the statutes is amended to read:

14           861.33 (4) ~~Subject to sub. (1) (c), the~~ The personal representative has power,  
15 without court order, to execute appropriate documents to effect transfer of title to any  
16 personal property ~~selected by the spouse or children~~ selects under this section. A  
17 person may not question the validity of the documents of transfer or refuse to  
18 accomplish the transfer on the grounds that the personal representative is also the  
19 surviving spouse ~~or the only child~~ of the decedent.

20           **SECTION 147.** 861.35 (title) of the statutes is amended to read:

21           **861.35 (title) Special allowance for support of spouse and support and**  
22 **education of dependent minor children.**

\*\*\*NOTE: I did not put any treatment of s. 861.35 in an initial applicability  
provision.

23           **SECTION 148.** 861.35 (1c) of the statutes is repealed.